

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MONTEREY MUSHROOMS, INC.,

Plaintiff,

vs.

OASIS CORP. dba ONE OF A KIND
PRODUCE, MICHELLE R. IOVINO and
OASIS TRUCKING, LLC,

Defendants.

Case No.: 2:10-cv-0970-RLH-LRL

O R D E R

(Ex Parte Motion for a Temporary
Restraining Order—#7)

Before the Court is Plaintiff Monterey Mushrooms, Inc.'s **Ex Parte Motion for a Temporary Restraining Order (#7)**, filed February 18, 2010.

BACKGROUND

Plaintiff Monterey Mushrooms is a wholesale distributor of produce in the United States. Defendant Oasis Corporation dba One of a Kind Produce is a Nevada corporation that purchases and sells produce. Defendant Michelle Iovino, a Nevada resident, is allegedly the sole officer of One of a Kind Produce. Defendant Oasis Trucking, LLC is a Nevada company that apparently does business and is closely affiliated with One of a Kind Produce.

From April to June 2010, Monterey delivered several shipments of produce to One of a Kind. According to Monterey, the value of the produce totaled \$39,357.05, and was to be paid for by One of a Kind in regular installments. Monterey alleges that at the time it made these

1 shipments, One of a Kind had been “a historically slow paying customer,” but had nonetheless
 2 “sent consistent payments.” (Dkt. #7, Mot. Affidavit of Rebecca Gress, ¶ 11.) Monterey now
 3 alleges that One of a Kind has made no effort to pay for the produce it received from April to June
 4 2010. Monterey also claims that when it contacted One of a Kind about its delinquent balance,
 5 One of a Kind’s attorney informed it that One of a Kind (1) would soon be going out of business;
 6 (2) is contemplating bankruptcy; (3) does not have enough money to pay all of its debts; and (4)
 7 owes \$850,000 to its suppliers, but has assets valued at only \$350,000.

8 On June 22, Monterey filed suit in this Court against Defendants and alleged claims
 9 for declaratory relief and damages under the Perishable Agricultural Commodities Act, 7 U.S.C. §
 10 499 (“PACA”), as well as claims for breach of contract, breach of fiduciary duty, conversion, and
 11 constructive trust. Also on June 22, Monterey filed two motions: an ex parte motion for a
 12 temporary restraining order and a motion for preliminary injunction. For the reasons discussed
 13 below, the Court grants Monterey’s motion for a temporary restraining order and sets a briefing
 14 schedule on its motion for preliminary injunction.

15 DISCUSSION

16 I. Jurisdiction

17 The Court has subject matter jurisdiction over Monterey’s claims pursuant to 28
 18 U.S.C. §§ 1331 and 1337. Monterey seeks relief under PACA, a federal statute that specifically
 19 grants district courts jurisdiction to adjudicate claims “to enforce payments” from the PACA trust
 20 fund and to “prevent and restrain dissipation” of the trust fund. 7 U.S.C. § 499(e)(c)(5).

21 II. Analysis

22 Monterey seeks an order enjoining Defendants from “using, consuming, or
 23 otherwise dissipating trust assets under . . . PACA . . . or making payment of any PACA trust asset
 24 to any creditor, person, or entity until further order of this Court or upon agreement of the
 25 Plaintiff.” (Dkt. #7, Mot. 2.) In order to obtain a temporary restraining order or a preliminary
 26 injunction, a plaintiff must show: (1) it will suffer irreparable harm if injunctive relief is not

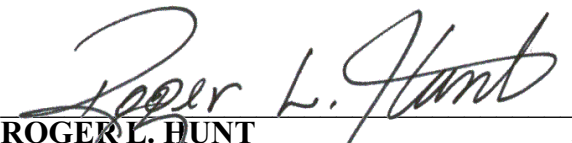
1 dissipating any and all assets from the PACA trust fund for the duration of this restraining order.
2 This restraining order is effective up to the time of the hearing on Monterey's Motion for
3 Preliminary Injunction.

4 IT IS FURTHER ORDERED that a hearing on Monterey's Motion for Preliminary
5 Injunction is set for Wednesday, July 14, 2010 at 4pm in Courtroom 6C of the Lloyd D. George
6 Courthouse, 333 Las Vegas Blvd South, Las Vegas, NV, 89101.

7 IT IS FURTHER ORDERED that Monterey immediately serve One of a Kind
8 Produce by email and pursuant to Rule 4 of the Federal Rules with a copy of the Complaint, Ex
9 Parte Motion for a Temporary Restraining Order, and Motion for Preliminary Injunction, and this
10 Court's Order Granting the Ex Parte Motion for a Temporary Restraining Order.

11 IT IS FURTHER ORDERED that One of a Kind Produce file any opposition to
12 Monterey's Motion for Preliminary Injunction no later than July 7, 2010. If Monterey chooses to
13 file a reply, it must do so no later than July 12, 2010.

14 Dated: June 28, 2010.

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17 **ROGER L. HUNT**
18 **Chief United States District Judge**
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